

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF DELAWARE

ABBOTT LABORATORIES, an Illinois
corporation,

Plaintiff,

v.

BANNER PHARMACAPS INC., a Delaware
corporation,

Defendant.

Civil Action No. 07-CV-00754-GMS

**ABBOTT LABORATORIES' MOTION TO DISMISS
BANNER'S UNFAIR COMPETITION COUNTERCLAIM**

Plaintiff, Abbott Laboratories ("Abbott"), by its attorneys and pursuant to Federal Rule 12(b)(6), respectfully moves this Court for an Order dismissing, with prejudice, Banner's second counterclaim, entitled "unfair competition." The bases for this motion are set forth fully in the accompanying Brief, filed simultaneously herewith.

Attached is a proposed order dismissing Banner's second counterclaim, with prejudice.

Dated: February 20, 2008

Respectfully submitted,

CONNOLLY BOVE LODGE & HUTZ LLP

By: /s/ Paul E. Crawford

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[PROPOSED] ORDER

The Court having considered Abbott Laboratories' Motion to Dismiss Banner's Unfair Competition Counterclaim and Brief in Support of Abbott Laboratories' Motion to Dismiss Banner's Unfair Competition Counterclaim, and counsel for Plaintiff and Defendant having made their positions known on this Motion,

The Court finds that Banner's second counterclaim in this action fails to state a claim upon which relief may be granted. As such, pursuant to Federal Rule of Civil Procedure 12(b)(6),

It is therefore ORDERED that Abbott Laboratories' Motion to Dismiss Banner's Unfair Competition Counterclaim is hereby GRANTED and Banner's second counterclaim is hereby DISMISSED WITH PREJUDICE.

SO ORDERED

Date: _____

U.S. District Court Judge Gregory M. Sleet

CERTIFICATE OF SERVICE

I hereby certify that, on February 20, 2008, a true and correct copy of the foregoing documents entitled **Abbott's Motion to Dismiss Banner's Unfair Competition Counterclaim** and **Proposed Order** were served on the following persons via CM/ECF filing and the following methods:

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